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No. 03-52

IN THE

Supreme Court of the United States

AMERICAN AIRLINES, INC., and TERRY MEENAN,
Petitioners,

v.

ARTHUR GEDDES,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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American Airlines, Inc., and Terry Meenan respectfully file a reply brief in support of their petition for a writ of certiorari to review the judgment of the court of appeals in this case.

ARGUMENT

Petitioners file the following Reply Brief to address a single point: the confusion raised by Respondent's incorrect reliance on the ***ordinary preemption*** principles established by the Court in *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246 (1994), to argue that ***complete preemption*** should not apply to claims requiring interpretation of a collective bargaining agreement under the Railway Labor Act (RLA), 45 U.S.C. § 151, *et seq.* *Hawaiian Airlines* addressed *only* ordinary

preemption. The Court's decision does *not* stand for the overstated proposition urged by Respondent that the RLA fails the test for complete preemption recently reiterated by the Court in *Beneficial National Bank v. Anderson*, ___ U.S. ___, 123 S. Ct. 2058 (June 2, 2003).

The issue in *Hawaiian Airlines* did not involve removal to federal court under the complete preemption analysis. The ordinary preemption question presented was "whether an aircraft mechanic who claims in state court that he was discharged for refusing to certify the safety of a plane that he considered unsafe and for reporting his safety concerns to the Federal Aviation Administration may pursue available state law remedies for wrongful discharge, or whether he may seek redress only through the RLA's arbitral mechanism." *Id.* at 248. This is not the issue raised in the instant Petition, which is: Whether a state court claim that does require interpretation of a collective bargaining agreement can be removed to federal court on the basis of complete preemption.[1]

The *Hawaiian Airlines* Court determined the issue of ordinary preemption under the RLA in accordance with the standard established in *Lingle v. Norge Division of Magic Chef, Inc.*, 486 U.S. 399 (1988), for ordinary preemption of

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[1] Respondent, in a counterstatement of the Question Presented, claims that his state law tort claim is "a cause of action against his employer for retaliatory acts." *Respondent's Brief in Opposition* at i. In contrast to *Hawaiian Airlines*, however, where the tort pled was "wrongful retaliatory discharge," here the torts pled were "defamation, negligence, and negligent supervision and retention," Appendix 1a, 9a-10a, and directly challenge the collective bargaining agreement investigation process—typical subject matters for preemption. In addition, Geddes in fact filed separately an EEOC charge for retaliation which is *not* the subject of this litigation. Thus, Respondent's attempt to invoke *Hawaiian Airlines* through references to "retaliation" is unsupported by the facts and the record.

claims under the Labor Management Relations Act (LMRA), 29 U.S.C. § 185, *et seq.*[2] *Hawaiian Airlines*, 512 U.S. at 263. Under the *Lingle* and *Hawaiian Airlines* standard for ordinary preemption, where the resolution of a state law claim depends on an interpretation of the collective bargaining agreement, the claim is preempted and subject to the arbitral procedures favored under the LMRA and statutorily-mandated under the RLA. *Id.* at 261-263. If, however, a state law claim involves rights and obligations that exist independent of the collective bargaining agreement, under both *Lingle* and *Hawaiian Airlines*, the state law claim is not preempted by the LMRA or RLA, respectively, and may be maintained in a state or federal judicial forum. *Id.* at 260.

The language cited by Respondent from *Hawaiian Airlines* goes only to this issue of ordinary preemption, and reiterates the Court's holding that the RLA does not require system board adjustment of state law claims that are independent of a collective bargaining agreement. *See Respondent's Brief in Opposition* at 13.[3] The *Hawaiian Airlines* case did not address the issues of removal or complete preemption in those circumstances where the state law claim does, in fact,

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[2] As set forth in the Petition, that the Court has recognized both ordinary preemption and complete preemption under the LMRA, and adopted the same standard for ordinary preemption of LMRA and RLA claims, supports similar application of complete preemption principles under both labor laws. *Petition* at 12-13.

[3] The Court in *Hawaiian Airlines* determined that the claims for wrongful discharge in that case derived from rights and obligations grounded in state law and did not require an interpretation of the collective bargaining agreement between the parties. *Hawaiian Airlines*, 512 U.S. at 258, 266. Accordingly, those claims were not preempted under the ordinary preemption standard of the RLA and LMRA and could be maintained in court.

require interpretation of the collective bargaining agreement.[4] Nor does the referenced language compel the overbroad assertion by Respondent that the RLA cannot *completely preempt* claims such as Geddes' state law claims under the *Beneficial National Bank* framework for purposes of removal jurisdiction.

Hawaiian Airlines does not address or undermine Petitioners' argument demonstrating the need for certiorari review to ensure that through complete preemption the federal courts serve the critical role of protecting the RLA's adjustment board procedures, in the same manner in which the federal courts through complete preemption protect collectively-bargained arbitration procedures pursuant to the LMRA. *See Avco Corp.*, 390 U.S. at 558.

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[4] Similarly, the complete preemption issue under the LMRA was not addressed in *Lingle*, but in the Court's decision in *Avco Corp. v. Aero Lodge No. 735, International Assoc. of Machinists and Aerospace Workers*, 390 U.S. 557 (1968).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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